

EMPLOYMENT ORDINANCE

KLAMATH TRIBAL CODE

Title 6 Chapter 41

**Adopted January 26, 2019
by
General Council Resolution 2019-001**

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

TABLE OF CONTENTS

EMPLOYMENT DISCRIMINATION

41.01 Findings.....4
41.02 Purpose.....4
41.03 Definitions.....4
41.04 Unlawful Discrimination: General Rule.....7
41.05 Disability Discrimination.....9
41.06 Proof of Unlawful Employment Discrimination.....12
41.07 Not Unlawful Employment Discrimination.....12
41.08 Posting of General Rights and Obligations.....12
41.09 Enforcement.....12

FAMILY MEDICAL LEAVE

41.10 Findings.....12
41.11 Purpose.....13
41.12 Definitions.....13
41.13 Family Medical Leave Requirement.....13
41.14 Employee Benefits Protection.....14
41.15 Effect on Existing Employee Benefits.....14
41.16 Construction of Rights in Accordance with Federal Law.....15
41.17 No Consent to Applicability of Federal Law or Waiver of Sovereign Immunity.....15
41.18 Prohibited Acts.....15
41.19 Enforcement.....15

EMPLOYEE WAGES AND HOURS

41.20 Findings.....15
41.21 Purpose.....16
41.22 Definitions.....16
41.23 Minimum Wage.....16
41.24 Maximum Hours.....16
41.25 Exemptions.....16
41.26 Compensatory Time.....17
41.27 Construction of Rights in Accordance with Federal Law.....17
41.28 No Consent to Applicability of Federal Law or Waiver of Sovereign Immunity.....17
41.29 Prohibited Acts.....17
41.30 Enforcement.....18

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

ENFORCEMENT

41.31 Findings.....18
41.32 Purpose.....18
41.33 Definitions.....18
41.34 Complaints Against Tribal Employers; Exhaustion of Grievance within Tribal
Employers to Manager; Filing Deadline.....19
41.35 Proceedings Before the Tribal Court.....19
41.36 Limited Waiver of Sovereign Immunity.....20

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

EMPLOYMENT DISCRIMINATION

41.01 Findings. The Klamath Tribes find as follows:

(a) The Tribes have a primary interest in exercising their inherent sovereign authority to provide for a fair and productive working environment for employers and employees within the territorial jurisdiction of the Klamath Tribes.

(b) As a sovereign government, the Klamath Tribes find that it is in the Tribes' best interest to govern employment relations within the Tribes' territorial jurisdiction to ensure fair and productive working environments, and, to that end, to protect against employment discrimination in accordance with the Tribes' unique public policy values.

(c) The Tribes wish to protect against certain forms of employment discrimination in order to ensure fair and productive working environments within their jurisdiction.

(d) The Tribes wish to exercise their sovereign authority to address allegations of workplace discrimination occurring within their jurisdiction without interference by outside authorities and, to that end, enact this law to govern workplace discrimination in accordance with their unique public policy values.

41.02 Purpose. The purpose of this sub-chapter is to establish laws to protect against, and provide remedies for, employment discrimination on the basis of unlawful classifications in accordance with the Tribes' public policy values.

41.03 Definitions. As used in this sub-chapter, unless the context indicates otherwise, the following words have the following meanings:

(a) "Direct threat" means a significant risk to the health or safety of employees or others that cannot be eliminated by reasonable accommodation.

(b) "Disability" means a physical or mental impairment of an individual which substantially limits one or more of that person's major life activities or the state of being regarded as having such an impairment.

(1) "Physical or mental impairment" means (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or (b) any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

(2) “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) “Being regarded as having an impairment” means having (a) a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation, (b) a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward that impairment; or (c) having none of the impairments defined in Subsection KTC 41.03(c)(1) but being treated by an employer as having such an impairment and as being substantially limited by that impairment in one or more major life activities.

(c) “Discriminate” means to segregate, separate, or treat differently, and, for purposes of Subsection KTC 41.05(a) as it relates to an individual with a disability, “discriminate” means:

(1) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

(2) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer’s business operation;

(3) Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the employer’s need to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(4) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as the employer uses it, is shown to be job-related for the position in question and is consistent with business necessity; and

(5) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test is designed to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant (except when such skills are the factors that the test is designed to measure).

(d) “Employee” means an individual an employer employs. “Employee” does not include (1) volunteers for employers, (2) independent contractors, or (3) appointed or elected public officials of the Tribes, including but not limited to, Tribal Council members and their appointees,

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

Tribal Court judges, or any board, commission, or tribal regulatory body, that the Tribal Council has appointed.

(e) “Employer” means any entity located within the jurisdictional boundaries of the Klamath Tribes and employing any number of individuals. The term “employer” will not be construed to encompass an individual.

(f) “Family member” or “covered family member” includes, for the purposes of Family Medical Leave, KTC 41.10-41.19, an employee’s parent, grandparent, child, grandchild, spouse and parent-in-law.

- (1) “Parent” means a biological parent of an employee or an individual that stands or stood in loco parentis to an employee when the employee was a child. In loco parentis refers to a situation in which the individual day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- (2) “Grandparent” means the parent of the employee’s parent.
- (3) “Child” means the employee’s biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is under 18 years of age or older and incapable of self-care because of a mental or physical disability and requires active assistance or supervision to provide daily self-care in several of the activities of daily living. This would include activities such as grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, using public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office.
- (4) “Grandchild” means a child of the employee’s child.
- (5) “Spouse” means the employee’s husband or wife as recognized under Tribal or state law for purposes of marriage, including common law marriage. In addition, the Tribes recognize non-traditional relationships where an individual is related by blood or affinity whose close association with the employee is the equivalent of a spousal relationship.
- (6) “Parent-in-law” means the parent of the employee’s spouse.

(g) “Gender” means a person’s sex as male or female, including person’s identification of one self as male or female regardless of such person’s transition to a male or female identity.

(h) “Klamath Tribes” or the “Tribes” means the Klamath Tribes.

(i) “Qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position that individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or desires. For the purposes of this sub-chapter, consideration will be given to the employer’s judgment

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description will be considered evidence of the job-related requirements and the job's essential functions.

(j) "Reasonable accommodation" means: (1) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position that qualified applicant desires; or (2) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform that position's essential functions; or (3) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. "Reasonable accommodation" does not include making changes that would conflict with the application of the Tribes' policies or laws providing employment preferences for members of the Tribes, descendants of members of the Tribes, or members of other federally recognized Indian tribes. In addition, it is not a violation of this sub-chapter to fail to provide a reasonable accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the employer's business operation.

(k) "Supervisory employee" or "supervisor" means any person who has authority, in an employer's interest, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, adjust grievances, or discipline other employees through the exercise of independent judgment, or who has the authority to effectively recommend such action, providing that the authority is not of a merely routine or clerical nature.

(l) "Tribal Employer" means the Klamath Tribes and any department, agency, instrumentality of the Tribes, including any corporation or other business entity imbued with the sovereign immunity of the Tribes, when employing any number of employees within the territorial jurisdiction of the Tribes.

(m) "Undue Hardship"

(1) In General. The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in Subsection KTC 41.03(m)(2) below.

(2) Factors to be Considered. In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include:

(A) The nature and cost of the accommodation;

(B) The overall financial resources of the facility or facilities involved in providing the reasonable accommodation, the number of persons employed at that facility, the effect on expenses and resources, or the impact otherwise of the accommodation upon the facility's

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

operation; and

(C) The financial resources of the employer's operational division.

(3) Harm to Public Revenue. Given the importance of Tribal Employers' revenues to support the Tribes' governmental services, accommodations are only required if they do not create an undue financial impact on a Tribal Employer, accounting for the net revenues that are used to support tribal government.

41.04 Unlawful Discrimination: General Rule. Except when based on a bona fide occupational qualification or in furtherance of the employer's employment preference policies, it is unlawful employment discrimination, in violation of this sub-chapter:

(a) For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race, color, national origin, religion, age, gender, sexual orientation, or disability, or because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions, or privileges of employment, or any other matter directly or indirectly related to employment; or, in recruiting individuals for employment or in hiring them, to use any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their race, color, national origin, religion, age, sex, gender, sexual orientation, or disability; or

(b) For an employer to discriminate in any manner against employees because they have opposed a practice that would be a violation of this sub-chapter or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this sub-chapter or pursuant to its enforcement provisions.

(c) "Unlawful employment discrimination," includes:

(1) Overt Discrimination: An intentional, purposeful act of discrimination, such as direct epithets aimed at an individual because of race, color, national origin, religion, age, sex, gender, sexual orientation, or disability, resulting in adverse employment action.

(2) Harassment (including Sexual Harassment):

(A) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as well as unwelcome comments, jokes, acts and other verbal or physical conduct related to race, color, national origin, religion, age, sex, gender, sexual orientation, or disability constitute unlawful workplace harassment when:

(i) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

(ii) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or

(iii) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(B) An employer is responsible for its acts and those of its supervisory employees with respect to the types of harassment described in Subsection KTC 41.04(c)(2)(A), subject to an affirmative defense to liability or damages by proving by a preponderance of the evidence:

(i) That the employer exercised reasonable care to prevent or promptly correct the harassing behavior, and

(ii) That the employee unreasonably failed to take advantage of any preventive or corrective opportunities the employer provided or to avoid harm otherwise.

(C) With respect to persons other than an employer's supervisors as described in Subsection KTC 41.04(c)(2)(B), an employer is responsible for acts of workplace harassment only where the employer, or its supervisory employees, knows or should have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took timely and appropriate corrective action.

(3) Unequal or Disparate Treatment: Treating persons in a different and less favorable manner than other similarly situated individuals on account of race, color, national origin, religion, age, sex, gender, sexual orientation, or disability.

(4) Disparate Impact: Conduct that, although applied equally to all, has an adverse effect on persons because of their race, color, national origin, religion, age, sex, gender, sexual orientation, or disability as compared to the effect on other persons.

41.05 Disability Discrimination.

(a) General Rule. An employer may not discriminate against a qualified individual with a disability because of that disability in regard to terms, conditions, and privileges of employment such as job application procedures; the hiring, advancement or discharge of employees; employee compensation; or job training. Except as permitted by Subsection KTC 41.05(b), an employer may not use medical examinations or inquiries to determine (1) whether a job applicant or employee is an individual with a disability or (2) the nature or severity of a disability; provided however, that an employer may always inquire into the ability of an individual to perform job-related functions.

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

(b) Medical Examinations and Inquiries.

(1) Job Applicants. An employer may ask a job applicant about the applicant's ability to perform job-related functions with or without reasonable accommodations and to describe or demonstrate such performance. An employer may not conduct a medical examination or make inquiries of a job applicant as to whether that applicant is an individual with a disability or as to the nature or severity of that disability.

(2) Prospective Employees. An employer may require a medical examination after an offer of employment has been made to a job applicant and before the applicant's employment duties begin, and may condition an offer of employment on the results of that examination if:

(A) All entering employees are subjected to such an examination regardless of disability;

(B) The results of that examination are used only in accordance with Subsection KTC 41.05(b).

(3) Current Employees. A covered entity may not require a medical examination and may not make inquiries of an employee as to whether that employee is an individual with a disability or as to the nature or severity of the disability, unless that examination or inquiry is shown to be job-related and consistent with business necessity. An employer may make inquiries into an employee's ability to perform job-related functions.

(c) Confidentiality of Medical Information. All information obtained regarding an individual's medical condition or history must be (1) collected and maintained on separate forms and in separate medical files, (2) treated as a confidential medical record, and (3) used only in accordance with this Section, except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the individual and necessary accommodations;

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(d) Drug, Alcohol, and Marijuana Use.

(1) Medical Tests. For purposes of Subsection KTC 41.05(b), a test to determine illegal drug use or abuse of alcohol or marijuana is not considered a medical examination.

(2) Rules of Construction.

(A) The term "qualified individual with a disability" as used in Subsection KTC

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

41.05(a) does not include any employee or applicant who is currently engaging in the use of marijuana or the illegal drug use or the improper use of prescription drugs or alcohol when the employer acts on the basis of such use.

(B) Nothing in Subsection KTC 41.05(a) will be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug or alcohol rehabilitation program and is no longer engaging in illegal drug use or improper use of prescription drugs or alcohol, or has otherwise been rehabilitated successfully and is no longer engaging in such use, or

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use.

(3) It is not a violation of this sub-chapter for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug or alcohol testing, designed to ensure that an individual described in Subsections KTC 41.05(d)(2)(B)(i) or (ii) is no longer engaging in illegal drug use or improper use of prescription drugs or alcohol. Nor is it a violation of this sub-chapter for an employer to discipline an employee for a drug or alcohol policy violation occurring before an employee asserts that the employee is in need of accommodation to undergo treatment for marijuana, alcohol, or drug abuse.

(4) Authority of Employers. An employer may:

(A) Decide not to hire an individual who tests positive for marijuana use.

(B) Prohibit illegal drug use and the use of alcohol or marijuana at the workplace by all employees at all times;

(C) Require that employees may not be under the influence of alcohol or marijuana or be engaging in or under the influence of illegal drugs at the workplace;

(D) Require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 U.S.C. § 701 et seq.;

(E) Hold an employee who engages in the use of drugs, marijuana, or alcohol to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug or alcohol use, regardless of whether or not the employee's drug or alcohol use causes the employee to be disabled; provided that an employer may be required to make a reasonable accommodation for an otherwise qualified individual with a disability to seek treatment in a supervised drug, marijuana or alcohol rehabilitation program.

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

(F) Adopt written policies or procedures that allow for the use of pre-employment, random, reasonable suspicion, post-accident, and follow-up testing that does not violate the protections set forth in this sub-chapter.

(e) Defenses.

(1) General Provisions. Qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to a qualified individual with a disability, as defined in Subsection KTC 41.03(i), will not constitute discrimination under this sub-chapter if shown to be job-related and consistent with business necessity.

(2) Qualification Standards Defined. For this section's purposes, the term "qualification standards" may include a requirement that an individual does not pose a direct threat to the health or safety of individuals in the workplace.

(3) Disability. This sub-chapter does not prohibit an employer from discharging or refusing to hire an individual with a disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an individual with a disability, if the individual, because of the disability, is unable to perform the essential functions of the employment position that the individual holds or desires, or is unable to perform the essential functions of that position in a manner that would not endanger the health or safety of the individual or others, or is unable to be at, remain at or go to or from the place where the employment duties are to be performed.

41.06 Proof of Unlawful Employment Discrimination. Unlawful employment discrimination exists if a complainant shows that the complainant's race, color, national origin, religion, age, gender, sexual orientation or disability, even if not the sole factor, was more likely than not the substantial factor motivating the employer's action.

41.07 Not Unlawful Employment Discrimination.

(a) Employment Preference. Nothing in this sub-chapter may be construed to prohibit any action to provide employment preferences in accordance with an employer's Indian or tribal preference policies.

(b) Infectious and Communicable Diseases. Assignment of individuals with an infectious or communicable disease is governed by the following:

(1) In any case in which an individual has an infectious or communicable disease that poses a significant risk to the health or safety of the employee or others in the workplace, an employer may refuse to assign or continue to assign the individual to perform work, unless the risk can be eliminated by reasonable accommodation.

(2) Nothing in this sub-chapter may be construed to preempt, modify or amend any

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

tribal law applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, as set out in the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services.

41.08 Posting of General Rights and Obligations. Employers must post in a prominent and accessible location in the workplace a poster summarizing the employee rights and employer obligations under this sub-chapter in a form the employer's legal department has approved.

41.09 Enforcement. This sub-chapter may be enforced under the provisions of the Enforcement sub-chapter (KTC 41.31-41.35).

FAMILY MEDICAL LEAVE

41.10 Findings. The Klamath Tribes find as follows:

(a) The Tribes have a primary interest in exercising their inherent sovereign authority to provide for a fair and productive working environment for employers and employees within the territorial jurisdiction of the Klamath Tribes.

(b) As a sovereign government, the Klamath Tribes find that it is in the Tribes' best interest to govern employment relations within its territorial jurisdiction to ensure fair and productive working environments, and, to that end, to provide job security, in accordance with the unique public policy values of the Tribes, for those employees who must take time off from work as a result of their own serious health condition, to care for a family member with a serious health condition, for the birth or adoption of a child, or to care for a covered service member.

(c) The Tribes wish to set forth the terms and conditions for such leave for such employees to ensure fair and productive working environments within their jurisdiction.

(d) The Tribes exercise their inherent sovereign authority to address family medical leave for employees in a manner that is effective and efficient and, to that end, as far as the legal standards of other jurisdictions correspond with the Tribes' public policy values, and without in any way compromising their own inherent sovereign authority, the Tribes may choose to adopt the standards of other jurisdictions as the law of the Tribes.

41.11 Purpose. The purpose of this sub-chapter is to establish employees' legal rights to family medical leave in accordance with the Tribes' public policy values.

41.12 Definitions. Unless otherwise provided in this sub-chapter, or context shows otherwise, the definitions of Subsections KTC 41.03(d), (e), (g), (i), and (l) are incorporated in this sub-chapter.

41.13 Family Medical Leave Requirement. Eligible employees are generally entitled to up to

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

twelve (12) work weeks of unpaid family medical leave in the 12-month period the employer designates. An eligible employee is an employee of a covered employer who: (1) Has been in the employer's employ for at least twelve (12) months, and (2) has been employed for at least one thousand two hundred fifty (1,250) hours of service during the 12-month period immediately before the leave begins, and (3) Is employed at a worksite where the employer employs fifty (50) or more employees within seventy-five (75) miles of that worksite. Nothing in this sub-chapter prevents an employer from setting eligibility criteria that are less strict than those this sub-chapter provides.

The following conditions apply to family medical leave granted under this sub-chapter:

(a) The employee must give at least thirty (30) days' written notice of the intended date upon which family medical leave will begin and end, unless medical emergency prevents the employee from giving that notice; or as soon as practicable under the circumstances if thirty (30) days' notice is not possible.

(b) The employer may require medical certification from a health care provider or other documentation to support the need for leave.

Family medical leave granted under this sub-chapter is unpaid leave unless the employee is otherwise eligible for paid leave under employer policies, disability insurance, or workers' compensation. If the employee is eligible for paid leave for part of the leave time granted by this sub-chapter, any remaining leave time will be unpaid. An eligible employee may elect, or an employer may require the employee, to use accrued paid vacation leave, personal leave, sick leave, or family leave concurrently with leave provided under this sub-chapter unless the employee is receiving pay through workers' compensation or disability insurance.

41.14 Employee Benefits Protection.

(a) Restoration. Any employee who exercises the right to family medical leave under this sub-chapter, upon expiration of the leave, is entitled to be restored by the employer to the position the employee held when the leave began or to an equivalent position with equivalent employee benefits, pay and other terms and conditions of employment, provided that an employee who would not be entitled to continue employment without having taken family medical leave is not entitled to such restoration.

(b) Maintenance of Employee Benefits. During any family medical leave taken under this sub-chapter, the employer will maintain health insurance coverage at the level and under the conditions coverage would have been provided if the employee had continued in employment, provided that the employee will still be required to pay his or her portion of the health insurance premiums as applicable under the employer's policy. If the employee does not return to work after taking family medical leave under this sub-chapter, the employee may be required to pay the employer for the cost of health insurance the employer incurred while the employee was on such leave if the employee does not return to work for a reason other than the serious health condition of

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

the employee or the employee's covered family member, a covered service member's serious injury or illness, or another reason beyond the employee's control.

(c) Exceptions. An employee has no greater right to restored employment or to other benefits or conditions of employment under this sub-chapter than if the employee had been continuously employed during the leave time taken. The employer has the burden to show that the employee would not otherwise have been employed or entitled to the benefits at the time reinstatement is requested in order to deny that reinstatement.

(d) Certification. As a condition of restoration to employment, the employer may require the employee to provide health care provider certification that the employee is able to resume work and safely perform his or her job functions. Nothing in this sub-chapter prohibits an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

41.15 Effect on Existing Employee Benefits.

(a) Benefit Accrual. Taking family medical leave under this sub-chapter will not result in the loss of any employee benefit accrued before the date on which the leave began. With the exception of health insurance benefits, the accrual of other benefits during any unpaid leave period will be governed by the employer policies and practices applicable to employees on other similar unpaid leaves of absence.

(b) Limitations. Nothing in this sub-chapter entitles any restored employee to the accrual of any seniority or employment benefits during any period of leave or to any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

41.16 Construction of Rights in Accordance with Federal Law. In the exercise of its inherent sovereign authority and without in any way compromising its sovereign authority to determine the standards and conditions under which family medical leave may be granted and protected within the Tribes' territorial jurisdiction, until such time as the Tribes may choose to enact further or amended provisions of this Chapter, employees' rights and benefits to family medical leave under this sub-chapter should be construed in accordance with the federal Family Medical Leave Act (FMLA), provided, however, that, with respect to the application of this sub-chapter to Tribal Employers, if there is any conflict between the terms of this sub-chapter and the FMLA, this sub-chapter controls.

41.17 No Consent to Applicability of Federal Law or Waiver of Sovereign Immunity. The Tribes' decision to construe rights and benefits under this Chapter in accordance with the FMLA as provided in Subsection KTC 41.16 will not be construed as a consent to the application of the FMLA to the Tribes or to any Tribal Employer or as any waiver of sovereign immunity from suit.

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

41.18 Prohibited Acts.

(a) Unlawful Interference with or Denial of Rights. An employer may not interfere with, restrain or deny the lawful exercise of or the attempt to exercise any right this sub-chapter provides.

(b) Unlawful Discrimination Against Exercise of Rights. An employer may not discriminate against any employee for lawfully exercising any right this sub-chapter provides.

(c) Unlawful Discrimination Against Opposition. An employer may not discriminate against any employee for lawfully opposing any practice this sub-chapter makes unlawful.

41.19 Enforcement. This Chapter may be enforced according to the provisions of the Enforcement sub-chapter (KTC 41.31-41.35).

EMPLOYEE WAGES AND HOURS

41.20 Findings. The Klamath Tribes find as follows:

(a) The Tribes have a primary interest in exercising their inherent sovereign authority to provide for a fair and productive working environment for employers and employees within the territorial jurisdiction of the Klamath Tribes.

(b) As a sovereign government, the Klamath Tribes find that it is in the Tribes' best interest to govern employment relations within its territorial jurisdiction to ensure fair and productive working environments, and, to that end, to establish standards and rules governing minimum hourly wages and overtime pay.

(c) The Tribes wish to set forth the terms and conditions for minimum wages and overtime within their jurisdiction.

(d) The Tribes exercise their inherent sovereign authority to address minimum wages and overtime in a manner that is effective and efficient and, to that end, as far as the legal standards of other jurisdictions correspond with the Tribes' public policy values, and without in any way compromising their own inherent sovereign authority, the Tribes may choose to adopt the standards of other jurisdictions as the law of the Tribes.

41.21 Purpose. The purpose of this sub-chapter is to establish legal rights of employees to minimum wages and overtime in accordance with the Tribes' public policy values.

41.22 Definitions. Unless otherwise provided in this sub-chapter, or context shows otherwise, the definitions of Subsection KTC 41.03 are incorporated in this sub-chapter.

41.23 Minimum Wage. Employees will be paid an hourly wage of not less than the minimum

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

wage established by federal law by the authority of the federal Fair Labor Standards Act of 1938, Title 29 of the United States Code, Sections 201 et seq., as amended (“FLSA”) and U.S. Department of Labor regulations concerning the FLSA. The Tribal Council may adopt a Tribal specific wage scale that is higher than the FLSA wage requirement.

41.24 Maximum Hours. Except as otherwise provided in this sub-chapter, no employer may employ any of its employees for a workweek longer than forty (40) hours unless that employee receives compensation for hours worked in excess of forty (40) hours at a rate not less than one and one-half (1 and 1/2) times the regular rate at which the employee is employed. In determining whether or not an employee has been employed for a workweek longer than forty (40) hours, only hours the employee has actually worked are considered; hours paid but not worked (e.g. vacation, holidays, and sick time) are not counted.

41.25 Exemptions. The provisions in sections KTC 41.23 and 41.24 do not apply to any categories of employees that the Tribal Council designates as exempt. Nor do sections KTC 41.23 and 41.24 apply to employees employed in a bona fide executive, administrative, or professional capacity, and these exemptions will be construed as provided by Subsection KTC 41.27. Nor do the provisions in Sections KTC 41.23 and 41.24 apply with respect to other employees exempt from either minimum wages or overtime according to the FLSA.

41.26 Compensatory Time. Tribal Employers may offer employees the option of receiving compensatory time off at the rate of one and one half (1 and 1/2) hours in place of overtime pay after that employee has worked forty (40) hours within a work week, provided that such compensatory time shall accumulate to no more than 240 hours total.

41.27 Construction of Rights in Accordance with Federal Law. In the exercise of its inherent sovereign authority and without in any way compromising its sovereign authority to determine the standards and conditions under which minimum wages, compensatory time, and overtime pay may be required and protected within the Tribes’ territorial jurisdiction, until such time as the Tribes may choose to enact further or amended provisions of this sub-chapter, the rights of employees with respect to minimum wages, maximum hours, compensatory time, and overtime pay under shall be construed in accordance with the FLSA and cases and regulations under the FLSA, provided, however, that, with respect to the application of this sub-chapter to Tribal Employers, if there is any conflict between the terms of this sub-chapter and the FLSA, this sub-chapter shall control.

41.28 No Consent to Applicability of Federal Law or Waiver of Sovereign Immunity. The Tribes’ decision to construe rights and benefits under this sub-chapter in accordance with the FLSA as provided in Subsection KTC 41.27 will not be construed as a consent to the FLSA’s application to the Tribes or to any Tribal Employer or as any waiver of sovereign immunity from suit.

41.29 Prohibited Acts. The following acts are prohibited:

- (a) To transport, offer for transportation, ship, deliver, or sell in commerce, or to ship,

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

deliver, or sell with knowledge that shipment or delivery or sale of goods in commerce is intended, any goods in the production of which any employee was employed in violation of sections KTC 41.23 and 41.24;

(b) to violate any of the provisions of sections KTC 41.23 and 41.24, above;

(c) to discharge or in any other manner discriminate against any employee because that employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this sub-chapter, or has testified or is about to testify in any such proceeding;

(d) to violate any of the child labor provisions of the FLSA;

(e) to violate the recordkeeping provisions of the FLSA.

41.30 Enforcement. This sub-chapter may be enforced according to the Enforcement Section (KTC 41.31-41.35).

ENFORCEMENT

41.31 Findings. The Klamath Tribes find as follows:

(a) The Tribes have a primary interest in exercising their inherent sovereign authority to provide for a fair and productive working environment for employers and employees within the territorial jurisdiction of the Klamath Tribes.

(b) As a sovereign government, the Klamath Tribes find that it is in the Tribes' best interest to govern employment relations within its territorial jurisdiction to ensure fair and productive working environments, and, to that end, to establish enforcement provisions for its law governing labor and employment.

(c) The Tribes wish to set forth the enforcement procedures and remedies for their laws governing labor and employment relations within their jurisdiction.

41.32 Purpose. The purpose of this sub-chapter is to establish remedies, authorities, and procedures for the enforcement of the rights provided by KTC Title 6 Chapter 41.

41.33 Definitions.

(a) Unless otherwise provided in this sub-chapter, or context shows otherwise, the definitions of Subsection KTC 41.03 are incorporated in this sub-chapter.

(b) "Elements of a prima facie case" means, with respect to claims of unlawful discrimination under the Employment Discrimination sub-chapter (KTC 41.01-09), the following:

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

- (1) evidence of overt discrimination as set forth in Subsection KTC 41.04(c)(1),
- (2) evidence of harassment as set forth in Subsection KTC 41.04(c)(2),
- (3) evidence of unequal or disparate treatment as set forth in Subsection KTC 41.04(c)(3),
- (4) evidence of disparate impact as set forth in Subsection KTC 41.04(c)(4); and
- (5) in the case of claims of disability discrimination, evidence of discrimination on the basis of disability as set forth in Subsection KTC 41.05(a).

A prima facie case cannot rest upon assertions that do not constitute employment discrimination according to Subsection KTC 41.07.

41.34 Complaints Against Tribal Employers; Exhaustion of Grievance within Tribal Employers to Manager; Filing Deadline. Any employee of a Tribal Employer who believes that he or she has been subjected to unlawful employment discrimination, unlawful denial of family medical leave protection, or unlawful denial of minimum wages, compensatory time, or overtime pay under this Chapter or otherwise suffered retaliation in violation of this Chapter may file a complaint with the Tribal Court. For complaints against Tribal Employers, the complaint must allege (and the employee must establish) that the employee filed and completed a grievance with respect to the alleged unlawful conduct with management within the Tribal Employer in accordance with the employer's grievance procedure. Complaints against Tribal Employers must be filed no later than 90 days after the completion of that grievance process. Complaints against employers other than Tribal Employers must be filed in the Tribal Court no later than 90 days after the conduct asserted to constitute a violation of this Chapter.

41.35 Proceedings Before the Tribal Court.

(a) Preliminary Conference. After receiving a Complaint, the Tribal Court shall promptly convene a conference with the claimant and a representative of the employer to informally discuss the claims, prospects for settlement, and if settlement is not possible, the scheduling of a hearing.

(b) Hearings. Hearings on alleged violations of this Chapter shall be scheduled to accommodate the parties and their witnesses. Telephonic testimony may be permitted. The hearing will be recorded in such manner that a complete and accurate transcript of the proceedings can be made.

(1) If a party fails to appear for hearing, the Tribal Court may enter a default order that may include one or more remedies in Subsection KTC 41.35(c).

(2) A claimant who asserts employment discrimination under KTC 41.01-09 must

EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

present evidence to establish the elements of a prima facie case. If claimant asserting employment discrimination under KTC 41.01-09 fails to present evidence to establish the elements of a prima facie case, the Tribal Court shall dismiss the complaint.

(3) Promptly after the hearing, the Tribal Court shall issue written order, setting forth its findings of fact and conclusions of law. The order must include a determination of whether the preponderance of the evidence on the record supports the employee's claim. If the Court finds that the employee's claim is supported by a preponderance of the evidence on the record, the Court shall order remedies in accordance with Subsection KTC 41.35(c). If the Court finds that the claim is not supported by a preponderance of the evidence on the record, the Court shall enter an order of dismissal.

(c) Remedies. Upon finding for the employee, the Court may order one or more of the following remedies:

(1) An order to cease and desist from the unlawful practice(s) specified in the order;

(2) Where an employee has been wrongfully separated from employment or not properly reinstated to an employment position:

(A) An order to employ or reinstate the employee to the same or equivalent position;

(B) An order to restore the employee's back pay and benefits;

(3) In a case where reinstatement would be an appropriate remedy, but it is not feasible, an order of payment in place of reinstatement not to exceed twelve (12) weeks of pay;

(4) An order restoring wages, overtime pay or benefits wrongfully withheld or not paid;

(5) In the case of unlawful disability discrimination, an order to provide reasonable accommodations for an employee's disability.

(6) An amount of up to \$5,000 for compensatory damages (i.e. emotional pain and suffering).

(d) Additional Remedies Prohibited. The Court lacks jurisdiction to award any other remedies.

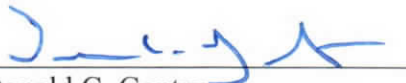
(e) Notice to Parties and Clerk. The Court shall mail a copy of any notice or decision affecting a party to that party's last known address and, when a party's email address is known to the Court, to the party's email address.


EMPLOYMENT ORDINANCE
KLAMATH TRIBAL CODE
Title 6 Chapter 41

41.36 Limited Waiver of Sovereign Immunity. The sovereign immunity of Tribal Employers is hereby waived for the purpose of proceedings before the Tribal Court under KTC 41.35, and the enforcement of remedies issued by order of the Tribal Court under KTC 41.35.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Special General Council meeting held on the 26th day of January 2019, with a quorum present, the General Council took action and duly adopted this Ordinance by a vote of 42 for, 1 opposed, and 3 abstentions by General Council Resolution _____.


Donald C. Gentry
Chairman
The Klamath Tribes


Roberta Frost
Secretary
The Klamath Tribes

Legislative History:

Originally adopted by the Klamath Tribes General Council on January 26, 2019 pursuant to General Council Resolution 2019-001.

Date Adopted: 1/26/2019

Recent Amendment: _____

